

REMARKS

Summary of the Amendment

Upon entry of the above amendment, claims 1-34 and 54-117 will have been canceled, claims 35 and 44 will have been amended, and claims 118-135 will have been added. Accordingly, claims 35-53 and 118-135 will be pending with claims 35, 129 and 133 being in independent form. Applicant reserves the right to file one or more divisional applications directed to the subject matter of the canceled claims.

Summary of the Official Action

In the instant Office Action, the Examiner neglected to return a form PTO-1449 submitted with the IDS filed on November 5, 2008. The Examiner also reiterated the Restriction Requirement, withdrew claims 1-34 and 54-117, and made the Restriction Requirement final. The Examiner also rejected claims 35-53 over the art of record. Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Restriction Requirement

The Examiner reiterated the previous restriction requirement, withdrew claims 1-34 and 54-117 from examination, and made the restriction requirement final. Applicant disagrees with the Restriction Requirement for the reasons already made of record, but has nevertheless canceled the withdrawn claims. Furthermore, Applicant submits that new claims 118-135 reads on the elected invention.

Request for PTO-1449

Applicant filed an IDS along with a form PTO-1449 on November 5, 2008. The Examiner, however, neglected to return the form PTO-1449 indicating consideration of the documents listed therein. Applicant requests that the Examiner consider the listed documents and return a signed and initialed form PTO-1449 with the next Office Action.

Traversal of Rejections Under 35 U.S.C. § 103(a)

Over Birschbach with Wilson

Applicant respectfully traverses the rejection of claims 35-41, 43, 44 and 46-53 under 35 U.S.C. §103(a) as unpatentable over US 2004/0146769 to BIRSCHBACH in view of US 6,808,838 to WILSON.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what this document discloses or suggests, Applicant submits that no proper modification of this document discloses, or even suggests: inter alia, connecting a cartridge comprising at least one variable volume chamber to a fuel cell comprising at least one variable volume chamber which includes a flexible material member and transferring fluid from the cartridge to the fuel cell, as recited in amended independent claim 35.

Applicant acknowledges that, e.g., Fig. 7 of BIRSCHBACH discloses a removable and replaceable cartridge which utilizes expandable bladders 86 and 87 (see paragraphs [0082] and [0086] – [0094]). However, it is not apparent that the fuel cell itself utilizes any such bladders, much less, at least one variable volume chamber which includes a flexible material member.

WILSON does not cure the deficiencies of BIRSCHBACH. While Applicant acknowledges that WILSON discloses a fuel cell having a superabsorbent material 36, there is no apparent disclosure in WILSON with regard to at least one variable volume chamber of the fuel cell including a flexible material member.

Thus, Applicant submits that the above-noted claim 35 is not disclosed, or even suggested, by any proper combination of BIRSCHBACH and WILSON.

Furthermore, Applicant submits that the above-listed dependent claims are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Birschbach with Wilson and Adams

Applicant respectfully traverses the rejection of claim 42 under 35 U.S.C. §103(a) as unpatentable over US 2004/0146769 to BIRSCHBACH in view of US 6,808,838 to WILSON and further in view of US 2005/0023236 to ADAMS et al.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what this document discloses or suggests, Applicant submits that no proper modification of this document discloses, or even suggests: inter alia, connecting a cartridge comprising at least one variable volume chamber to a fuel cell

comprising at least one variable volume chamber which includes a flexible material member and transferring fluid from the cartridge to the fuel cell, as recited in amended independent claim 35.

As explained above, Applicant acknowledges that, e.g., Fig. 7 of BIRSCHBACH discloses a removable and replaceable cartridge which utilizes expandable bladders 86 and 87 (see paragraphs [0082] and [0086] – [0094]). However, it is not apparent that the fuel cell itself utilizes any such bladders, much less, at least one variable volume chamber which includes a flexible material member.

Again, WILSON does not cure the deficiencies of BIRSCHBACH. While Applicant acknowledges that WILSON discloses a fuel cell having a superabsorbent material 36, there is no apparent disclosure in WILSON with regard to at least one variable volume chamber of the fuel cell including a flexible material member.

ADAMS does not cure the deficiencies of BIRSCHBACH and WILSON. While Applicant acknowledges that ADAMS discloses a cartridge for a fuel cell which utilizes an inner liner (see Fig. 1), there is no apparent disclosure in ADAMS with regard to at least one variable volume chamber of the fuel cell including a flexible material member.

Thus, Applicant submits that the above-noted claim 35 is not disclosed, or even suggested, by any proper combination of BIRSCHBACH, WILSON and ADAMS.

Furthermore, Applicant submits that the above-listed dependent claim is allowable at least for the reason that this claim depends from an allowable base claim and because this claim recites additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Birschbach with Wilson and Deinzer

Applicant respectfully traverses the rejection of claim 45 under 35 U.S.C. §103(a) as unpatentable over US 2004/0146769 to BIRSCHBACH in view of US 6,808,838 to WILSON and further in view of US 2006/0172171 to DEINZER et al.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what this document discloses or suggests, Applicant submits that no proper modification of this document discloses, or even suggests: inter alia, connecting a cartridge comprising at least one variable volume chamber to a fuel cell comprising at least one variable volume chamber which includes a flexible material member and transferring fluid from the cartridge to the fuel cell, as recited in amended independent claim 35.

As explained above, Applicant acknowledges that, e.g., Fig. 7 of BIRSCHBACH discloses a removable and replaceable cartridge which utilizes expandable bladders 86 and 87 (see paragraphs [0082] and [0086] – [0094]). However, it is not apparent that the fuel cell itself utilizes any such bladders, much less, at least one variable volume chamber which includes a flexible material member.

Again, WILSON does not cure the deficiencies of BIRSCHBACH. While Applicant acknowledges that WILSON discloses a fuel cell having a superabsorbent material 36, there is no apparent disclosure in WILSON with regard to at least one variable volume chamber of the fuel cell including a flexible material member.

DEINZER does not cure the deficiencies of BIRSCHBACH and WILSON. While Applicant acknowledges that DEINZER discloses a cartridge for a fuel cell which utilizes elastomer bellows

chambers 312 (see Fig. 3), there is no apparent disclosure in DEINZER with regard to at least one variable volume chamber of the fuel cell including a flexible material member.

Thus, Applicant submits that the above-noted claim 35 is not disclosed, or even suggested, by any proper combination of BIRSCHBACH, WILSON and DEINZER.

Furthermore, Applicant submits that the above-listed dependent claim is allowable at least for the reason that this claim depends from an allowable base claim and because this claim recites additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

New Claims are also Allowable

Applicant submits that the new claims 118-135 are allowable over the applied art of record. Specifically, claims 118-128 depend from claim 35 which is believed to be allowable. Furthermore, claims 129-135 recite a combination of features which are clearly not disclosed or suggested by the applied art of record. Accordingly, Applicant respectfully requests consideration of these claims and further requests that the above-noted claims be indicated as being allowable.

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

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Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
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